

REFERENCE TITLE: **unauthorized aliens; licensing.**

State of Arizona
House of Representatives
Forty-ninth Legislature
First Regular Session
2009

HB 2496

Introduced by
Representative Seel, Senator Pearce: Representatives Crump, Montenegro,
Stevens

AN ACT

AMENDING SECTIONS 23-212, 23-212.01, 23-214 AND 41-1080, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 6, ARTICLE 7.2, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-1080.01; AMENDING SECTION 41-4401, ARIZONA REVISED STATUTES; RELATING TO UNAUTHORIZED ALIENS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 23-212, Arizona Revised Statutes, is amended to read:

23-212. Knowingly employing unauthorized aliens: prohibition: false and frivolous complaints: violation: classification: license suspension and revocation: affirmative defense

A. An employer shall not knowingly employ an unauthorized alien. If, in the case when an employer uses a contract, subcontract or other independent contractor agreement to obtain the labor of an alien in this state, the employer knowingly contracts with an unauthorized alien or with a person who employs or contracts with an unauthorized alien to perform the labor, the employer violates this subsection.

B. The attorney general shall prescribe a complaint form for a person to allege a violation of subsection A of this section. The complainant shall not be required to list the complainant's social security number on the complaint form or to have the complaint form notarized. On receipt of a complaint on a prescribed complaint form that an employer allegedly knowingly employs an unauthorized alien, the attorney general or county attorney shall investigate whether the employer has violated subsection A of this section. If a complaint is received but is not submitted on a prescribed complaint form, the attorney general or county attorney may investigate whether the employer has violated subsection A of this section. This subsection shall not be construed to prohibit the filing of anonymous complaints that are not submitted on a prescribed complaint form. The attorney general or county attorney shall not investigate complaints that are based solely on race, color or national origin. A complaint that is submitted to a county attorney shall be submitted to the county attorney in the county in which the alleged unauthorized alien is or was employed by the employer. The county sheriff or any other local law enforcement agency may assist in investigating a complaint. THE ATTORNEY GENERAL OR THE COUNTY ATTORNEY MAY TAKE EVIDENCE, ADMINISTER OATHS OR AFFIRMATIONS, ISSUE SUBPOENAS REQUIRING ATTENDANCE AND TESTIMONY OF WITNESSES, CAUSE DEPOSITIONS TO BE TAKEN AND REQUIRE BY SUBPOENA DUCES TECUM THE PRODUCTION OF BOOKS, PAPERS AND OTHER DOCUMENTS THAT ARE NECESSARY FOR THE ENFORCEMENT OF THIS SECTION. PROCEEDINGS HELD DURING THE COURSE OF A CONFIDENTIAL INVESTIGATION ARE EXEMPT FROM TITLE 38, CHAPTER 3, ARTICLE 3.1. IF THE EMPLOYER OR ANY OTHER PERSON REFUSES TO OBEY A SUBPOENA OR FAILS TO ANSWER QUESTIONS AS PROVIDED BY THIS SUBSECTION, THE ATTORNEY GENERAL OR THE COUNTY ATTORNEY MAY APPLY TO THE SUPERIOR COURT IN THE MANNER PROVIDED IN SECTION 12-2212. SUBPOENAS UNDER THIS SECTION MAY BE SERVED BY PERSONAL SERVICE OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED. When investigating a complaint, the attorney general or county attorney shall verify the work authorization of the alleged unauthorized alien with the federal government pursuant to 8 United States Code section 1373(c). A state, county or local official shall not attempt to independently make a

1 final determination on whether an alien is authorized to work in the United
 2 States. An alien's immigration status or work authorization status shall be
 3 verified with the federal government pursuant to 8 United States Code section
 4 1373(c). A person who knowingly files a false and frivolous complaint under
 5 this subsection is guilty of a class 3 misdemeanor.

6 C. If, after an investigation, the attorney general or county attorney
 7 determines that the complaint is not false and frivolous:

8 1. The attorney general or county attorney shall notify the United
 9 States immigration and customs enforcement of the unauthorized alien.

10 2. The attorney general or county attorney shall notify the local law
 11 enforcement agency of the unauthorized alien.

12 3. The attorney general shall notify the appropriate county attorney
 13 to bring an action pursuant to subsection D of this section if the complaint
 14 was originally filed with the attorney general.

15 D. An action for a violation of subsection A of this section shall be
 16 brought against the employer by the county attorney in the county where the
 17 unauthorized alien employee is or was employed by the employer. The county
 18 attorney shall not bring an action against any employer for any violation of
 19 subsection A of this section that occurs before January 1, 2008. A second
 20 violation of this section shall be based only on an unauthorized alien who is
 21 or was employed by the employer after an action has been brought for a
 22 violation of subsection A of this section or section 23-212.01, subsection A.

23 E. For any action in superior court under this section, the court
 24 shall expedite the action, including assigning the hearing at the earliest
 25 practicable date.

26 F. On a finding of a violation of subsection A of this section:

27 1. For a first violation, as described in paragraph 3 of this
 28 subsection, the court:

29 (a) Shall order the employer to terminate the employment of all
 30 unauthorized aliens.

31 (b) Shall order the employer to be subject to a three year
 32 probationary period for the business location where the unauthorized alien
 33 performed work. During the probationary period the employer shall file
 34 quarterly reports in the form provided in section 23-722.01 with the county
 35 attorney of each new employee who is hired by the employer at the business
 36 location where the unauthorized alien performed work.

37 (c) Shall order the employer to file a signed sworn affidavit with the
 38 county attorney within three business days after the order is issued. The
 39 affidavit shall state that the employer has terminated the employment of all
 40 unauthorized aliens in this state and that the employer will not
 41 intentionally or knowingly employ an unauthorized alien in this state. The
 42 court shall order the appropriate agencies to suspend all licenses subject to
 43 this subdivision that are held by the employer if the employer fails to file
 44 a signed sworn affidavit with the county attorney within three business days
 45 after the order is issued. All licenses that are suspended under this

1 subdivision shall remain suspended until the employer files a signed sworn
2 affidavit with the county attorney. Notwithstanding any other law, on filing
3 of the affidavit the suspended licenses shall be reinstated immediately by
4 the appropriate agencies. For the purposes of this subdivision, the licenses
5 that are subject to suspension under this subdivision are all licenses that
6 are held by the employer specific to the business location where the
7 unauthorized alien performed work. If the employer does not hold a license
8 specific to the business location where the unauthorized alien performed
9 work, but a license is necessary to operate the employer's business in
10 general, the licenses that are subject to suspension under this subdivision
11 are all licenses that are held by the employer at the employer's primary
12 place of business. On receipt of the court's order and notwithstanding any
13 other law, the appropriate agencies shall suspend the licenses according to
14 the court's order. The court shall send a copy of the court's order to the
15 attorney general and the attorney general shall maintain the copy pursuant to
16 subsection G of this section.

17 (d) May order the appropriate agencies to suspend all licenses
18 described in subdivision (c) of this paragraph that are held by the employer
19 for not to exceed ten business days. The court shall base its decision to
20 suspend under this subdivision on any evidence or information submitted to it
21 during the action for a violation of this subsection and shall consider the
22 following factors, if relevant:

- 23 (i) The number of unauthorized aliens employed by the employer.
- 24 (ii) Any prior misconduct by the employer.
- 25 (iii) The degree of harm resulting from the violation.
- 26 (iv) Whether the employer made good faith efforts to comply with any
27 applicable requirements.
- 28 (v) The duration of the violation.
- 29 (vi) The role of the directors, officers or principals of the employer
30 in the violation.
- 31 (vii) Any other factors the court deems appropriate.

32 2. For a second violation, as described in paragraph 3 of this
33 subsection, the court shall order the appropriate agencies to permanently
34 revoke all licenses that are held by the employer specific to the business
35 location where the unauthorized alien performed work. If the employer does
36 not hold a license specific to the business location where the unauthorized
37 alien performed work, but a license is necessary to operate the employer's
38 business in general, the court shall order the appropriate agencies to
39 permanently revoke all licenses that are held by the employer at the
40 employer's primary place of business. On receipt of the order and
41 notwithstanding any other law, the appropriate agencies shall immediately
42 revoke the licenses.

43 3. The violation shall be considered:

- 44 (a) A first violation by an employer at a business location if the
45 violation did not occur during a probationary period ordered by the court

1 under this subsection or section 23-212.01, subsection F for that employer's
2 business location.

3 (b) A second violation by an employer at a business location if the
4 violation occurred during a probationary period ordered by the court under
5 this subsection or section 23-212.01, subsection F for that employer's
6 business location.

7 G. The attorney general shall maintain copies of court orders that are
8 received pursuant to subsection F of this section and shall maintain a
9 database of the employers and business locations that have a first violation
10 of subsection A of this section and make the court orders available on the
11 attorney general's website.

12 H. On determining whether an employee is an unauthorized alien, the
13 court shall consider only the federal government's determination pursuant to
14 8 United States Code section 1373(c). The federal government's determination
15 creates a rebuttable presumption of the employee's lawful status. The court
16 may take judicial notice of the federal government's determination and may
17 request the federal government to provide automated or testimonial
18 verification pursuant to 8 United States Code section 1373(c).

19 I. For the purposes of this section, proof of verifying the employment
20 authorization of an employee through the e-verify program creates a
21 rebuttable presumption that an employer did not knowingly employ an
22 unauthorized alien.

23 J. For the purposes of this section, an employer that establishes that
24 it has complied in good faith with the requirements of 8 United States Code
25 section 1324a(b) establishes an affirmative defense that the employer did not
26 knowingly employ an unauthorized alien. An employer is considered to have
27 complied with the requirements of 8 United States Code section 1324a(b),
28 notwithstanding an isolated, sporadic or accidental technical or procedural
29 failure to meet the requirements, if there is a good faith attempt to comply
30 with the requirements.

31 K. AN EMPLOYER IS NOT ENTRAPPED UNDER THIS SECTION IF THE EMPLOYER WAS
32 PREDISPOSED TO VIOLATE SUBSECTION A OF THIS SECTION AND LAW ENFORCEMENT
33 OFFICERS OR THEIR AGENTS MERELY PROVIDED THE EMPLOYER WITH AN OPPORTUNITY TO
34 VIOLATE SUBSECTION A OF THIS SECTION. IT IS NOT ENTRAPMENT FOR LAW
35 ENFORCEMENT OFFICERS OR THEIR AGENTS MERELY TO USE A RUSE OR TO CONCEAL THEIR
36 IDENTITY.

37 Sec. 2. Section 23-212.01, Arizona Revised Statutes, is amended to
38 read:

39 23-212.01. Intentionally employing unauthorized aliens;
40 prohibition; false and frivolous complaints;
41 violation; classification; license suspension and
42 revocation; affirmative defense

43 A. An employer shall not intentionally employ an unauthorized alien.
44 If, in the case when an employer uses a contract, subcontract or other
45 independent contractor agreement to obtain the labor of an alien in this

1 state, the employer intentionally contracts with an unauthorized alien or
2 with a person who employs or contracts with an unauthorized alien to perform
3 the labor, the employer violates this subsection.

4 B. The attorney general shall prescribe a complaint form for a person
5 to allege a violation of subsection A of this section. The complainant shall
6 not be required to list the complainant's social security number on the
7 complaint form or to have the complaint form notarized. On receipt of a
8 complaint on a prescribed complaint form that an employer allegedly
9 intentionally employs an unauthorized alien, the attorney general or county
10 attorney shall investigate whether the employer has violated subsection A of
11 this section. If a complaint is received but is not submitted on a
12 prescribed complaint form, the attorney general or county attorney may
13 investigate whether the employer has violated subsection A of this section.
14 This subsection shall not be construed to prohibit the filing of anonymous
15 complaints that are not submitted on a prescribed complaint form. The
16 attorney general or county attorney shall not investigate complaints that are
17 based solely on race, color or national origin. A complaint that is
18 submitted to a county attorney shall be submitted to the county attorney in
19 the county in which the alleged unauthorized alien is or was employed by the
20 employer. The county sheriff or any other local law enforcement agency may
21 assist in investigating a complaint. THE ATTORNEY GENERAL OR THE COUNTY
22 ATTORNEY MAY TAKE EVIDENCE, ADMINISTER OATHS OR AFFIRMATIONS, ISSUE SUBPOENAS
23 REQUIRING ATTENDANCE AND TESTIMONY OF WITNESSES, CAUSE DEPOSITIONS TO BE
24 TAKEN AND REQUIRE BY SUBPOENA DUCES TECUM THE PRODUCTION OF BOOKS, PAPERS AND
25 OTHER DOCUMENTS THAT ARE NECESSARY FOR THE ENFORCEMENT OF THIS SECTION.
26 PROCEEDINGS HELD DURING THE COURSE OF A CONFIDENTIAL INVESTIGATION ARE EXEMPT
27 FROM TITLE 38, CHAPTER 3, ARTICLE 3.1. IF THE EMPLOYER OR ANY OTHER PERSON
28 REFUSES TO OBEY A SUBPOENA OR FAILS TO ANSWER QUESTIONS AS PROVIDED BY THIS
29 SUBSECTION, THE ATTORNEY GENERAL OR THE COUNTY ATTORNEY MAY APPLY TO THE
30 SUPERIOR COURT IN THE MANNER PROVIDED IN SECTION 12-2212. SUBPOENAS UNDER
31 THIS SECTION MAY BE SERVED BY PERSONAL SERVICE OR CERTIFIED MAIL, RETURN
32 RECEIPT REQUESTED. When investigating a complaint, the attorney general or
33 county attorney shall verify the work authorization of the alleged
34 unauthorized alien with the federal government pursuant to 8 United States
35 Code section 1373(c). A state, county or local official shall not attempt to
36 independently make a final determination on whether an alien is authorized to
37 work in the United States. An alien's immigration status or work
38 authorization status shall be verified with the federal government pursuant
39 to 8 United States Code section 1373(c). A person who knowingly files a
40 false and frivolous complaint under this subsection is guilty of a class 3
41 misdemeanor.

42 C. If, after an investigation, the attorney general or county attorney
43 determines that the complaint is not false and frivolous:

44 1. The attorney general or county attorney shall notify the United
45 States immigration and customs enforcement of the unauthorized alien.

1 2. The attorney general or county attorney shall notify the local law
2 enforcement agency of the unauthorized alien.

3 3. The attorney general shall notify the appropriate county attorney
4 to bring an action pursuant to subsection D of this section if the complaint
5 was originally filed with the attorney general.

6 D. An action for a violation of subsection A of this section shall be
7 brought against the employer by the county attorney in the county where the
8 unauthorized alien employee is or was employed by the employer. The county
9 attorney shall not bring an action against any employer for any violation of
10 subsection A of this section that occurs before January 1, 2008. A second
11 violation of this section shall be based only on an unauthorized alien who is
12 or was employed by the employer after an action has been brought for a
13 violation of subsection A of this section or section 23-212, subsection A.

14 E. For any action in superior court under this section, the court
15 shall expedite the action, including assigning the hearing at the earliest
16 practicable date.

17 F. On a finding of a violation of subsection A of this section:

18 1. For a first violation, as described in paragraph 3 of this
19 subsection, the court shall:

20 (a) Order the employer to terminate the employment of all unauthorized
21 aliens.

22 (b) Order the employer to be subject to a five year probationary
23 period for the business location where the unauthorized alien performed work.
24 During the probationary period the employer shall file quarterly reports in
25 the form provided in section 23-722.01 with the county attorney of each new
26 employee who is hired by the employer at the business location where the
27 unauthorized alien performed work.

28 (c) Order the appropriate agencies to suspend all licenses described
29 in subdivision (d) of this paragraph that are held by the employer for a
30 minimum of ten days. The court shall base its decision on the length of the
31 suspension under this subdivision on any evidence or information submitted to
32 it during the action for a violation of this subsection and shall consider
33 the following factors, if relevant:

34 (i) The number of unauthorized aliens employed by the employer.

35 (ii) Any prior misconduct by the employer.

36 (iii) The degree of harm resulting from the violation.

37 (iv) Whether the employer made good faith efforts to comply with any
38 applicable requirements.

39 (v) The duration of the violation.

40 (vi) The role of the directors, officers or principals of the employer
41 in the violation.

42 (vii) Any other factors the court deems appropriate.

43 (d) Order the employer to file a signed sworn affidavit with the
44 county attorney. The affidavit shall state that the employer has terminated
45 the employment of all unauthorized aliens in this state and that the employer

1 will not intentionally or knowingly employ an unauthorized alien in this
2 state. The court shall order the appropriate agencies to suspend all
3 licenses subject to this subdivision that are held by the employer if the
4 employer fails to file a signed sworn affidavit with the county attorney
5 within three business days after the order is issued. All licenses that are
6 suspended under this subdivision for failing to file a signed sworn affidavit
7 shall remain suspended until the employer files a signed sworn affidavit with
8 the county attorney. For the purposes of this subdivision, the licenses that
9 are subject to suspension under this subdivision are all licenses that are
10 held by the employer specific to the business location where the unauthorized
11 alien performed work. If the employer does not hold a license specific to
12 the business location where the unauthorized alien performed work, but a
13 license is necessary to operate the employer's business in general, the
14 licenses that are subject to suspension under this subdivision are all
15 licenses that are held by the employer at the employer's primary place of
16 business. On receipt of the court's order and notwithstanding any other law,
17 the appropriate agencies shall suspend the licenses according to the court's
18 order. The court shall send a copy of the court's order to the attorney
19 general and the attorney general shall maintain the copy pursuant to
20 subsection G of this section.

21 2. For a second violation, as described in paragraph 3 of this
22 subsection, the court shall order the appropriate agencies to permanently
23 revoke all licenses that are held by the employer specific to the business
24 location where the unauthorized alien performed work. If the employer does
25 not hold a license specific to the business location where the unauthorized
26 alien performed work, but a license is necessary to operate the employer's
27 business in general, the court shall order the appropriate agencies to
28 permanently revoke all licenses that are held by the employer at the
29 employer's primary place of business. On receipt of the order and
30 notwithstanding any other law, the appropriate agencies shall immediately
31 revoke the licenses.

32 3. The violation shall be considered:

33 (a) A first violation by an employer at a business location if the
34 violation did not occur during a probationary period ordered by the court
35 under this subsection or section 23-212, subsection F for that employer's
36 business location.

37 (b) A second violation by an employer at a business location if the
38 violation occurred during a probationary period ordered by the court under
39 this subsection or section 23-212, subsection F for that employer's business
40 location.

41 G. The attorney general shall maintain copies of court orders that are
42 received pursuant to subsection F of this section and shall maintain a
43 database of the employers and business locations that have a first violation
44 of subsection A of this section and make the court orders available on the
45 attorney general's website.

1 H. On determining whether an employee is an unauthorized alien, the
 2 court shall consider only the federal government's determination pursuant to
 3 8 United States Code section 1373(c). The federal government's determination
 4 creates a rebuttable presumption of the employee's lawful status. The court
 5 may take judicial notice of the federal government's determination and may
 6 request the federal government to provide automated or testimonial
 7 verification pursuant to 8 United States Code section 1373(c).

8 I. For the purposes of this section, proof of verifying the employment
 9 authorization of an employee through the e-verify program creates a
 10 rebuttable presumption that an employer did not intentionally employ an
 11 unauthorized alien.

12 J. For the purposes of this section, an employer that establishes that
 13 it has complied in good faith with the requirements of 8 United States Code
 14 section 1324a(b) establishes an affirmative defense that the employer did not
 15 intentionally employ an unauthorized alien. An employer is considered to
 16 have complied with the requirements of 8 United States Code section 1324a(b),
 17 notwithstanding an isolated, sporadic or accidental technical or procedural
 18 failure to meet the requirements, if there is a good faith attempt to comply
 19 with the requirements.

20 K. AN EMPLOYER IS NOT ENTRAPPED UNDER THIS SECTION IF THE EMPLOYER WAS
 21 PREDISPOSED TO VIOLATE SUBSECTION A OF THIS SECTION AND LAW ENFORCEMENT
 22 OFFICERS OR THEIR AGENTS MERELY PROVIDED THE EMPLOYER WITH AN OPPORTUNITY TO
 23 VIOLATE SUBSECTION A OF THIS SECTION. IT IS NOT ENTRAPMENT FOR LAW
 24 ENFORCEMENT OFFICERS OR THEIR AGENTS MERELY TO USE A RUSE OR TO CONCEAL THEIR
 25 IDENTITY.

26 Sec. 3. Section 23-214, Arizona Revised Statutes, is amended to read:

27 23-214. Verification of employment eligibility: e-verify
 28 program; civil penalty; economic development
 29 incentives; list of registered employers

30 A. After December 31, 2007, every employer, after hiring an employee,
 31 shall verify the employment eligibility of the employee through the e-verify
 32 program. ON RECEIPT OF A FAILED VERIFICATION RESULT, THE EMPLOYER SHALL
 33 NOTIFY THE UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT AND THE COUNTY
 34 ATTORNEY OF THE EMPLOYEE AND THE EMPLOYEE'S FAILED VERIFICATION. AN EMPLOYER
 35 WHO VIOLATES THIS SUBSECTION IS SUBJECT TO A CIVIL PENALTY OF _____ DOLLARS
 36 FOR EACH VIOLATION. THE ATTORNEY GENERAL SHALL ENFORCE THIS SUBSECTION. THE
 37 ATTORNEY GENERAL MAY COLLECT THE CIVIL PENALTIES AND SHALL DEPOSIT, PURSUANT
 38 TO SECTIONS 35-146 AND 35-147, ANY CIVIL PENALTIES COLLECTED IN THE STATE
 39 GENERAL FUND.

40 B. In addition to any other requirement for an employer to receive an
 41 economic development incentive from a government entity, the employer shall
 42 register with and participate in the e-verify program. Before receiving the
 43 economic development incentive, the employer shall provide proof to the
 44 government entity that the employer is registered with and is participating
 45 in the e-verify program. If the government entity determines that the

1 employer is not complying with this subsection, the government entity shall
 2 notify the employer by certified mail of the government entity's
 3 determination of noncompliance and the employer's right to appeal the
 4 determination. On a final determination of noncompliance, the employer shall
 5 repay all monies received as an economic development incentive to the
 6 government entity within thirty days of the final determination. For the
 7 purposes of this subsection:

8 1. "Economic development incentive" means any grant, loan or
 9 performance-based incentive from any government entity that is awarded after
 10 September 30, 2008. Economic development incentive does not include any tax
 11 provision under title 42 or 43.

12 2. "Government entity" means this state and any political subdivision
 13 of this state that receives and uses tax revenues.

14 C. Every three months the attorney general shall request from the
 15 United States department of homeland security a list of employers from this
 16 state that are registered with the e-verify program. On receipt of the list
 17 of employers, the attorney general shall make the list available on the
 18 attorney general's website.

19 Sec. 4. Section 41-1080, Arizona Revised Statutes, is amended to read:

20 41-1080. Licensing eligibility; statement of citizenship or
 21 alien status; documentation; applicability; rules;
 22 definitions

23 A. After September 30, 2008 AND SUBJECT TO SUBSECTIONS C AND D, an
 24 agency or political subdivision of this state shall not issue a license to an
 25 individual if the individual does not ~~present~~ EXECUTE A STATEMENT OF
 26 CITIZENSHIP OR ALIEN STATUS AND PROVIDE DOCUMENTATION OF THAT STATUS BY
 27 PRESENTING any of the following documents to the agency or political
 28 subdivision indicating that the individual's presence in the United States is
 29 authorized under federal law:

30 1. An Arizona driver license issued after 1996 or an Arizona
 31 nonoperating identification license.

32 2. A driver license issued by a state that verifies lawful presence in
 33 the United States.

34 3. A birth certificate or delayed birth certificate issued in any
 35 state, territory or possession of the United States.

36 4. A United States certificate of birth abroad.

37 5. A United States passport.

38 6. A foreign passport with a United States visa.

39 7. An I-94 form with a photograph.

40 8. A United States citizenship and immigration services employment
 41 authorization document or refugee travel document.

42 9. A United States certificate of naturalization.

43 10. A United States certificate of citizenship.

44 11. A tribal certificate of Indian blood.

45 12. A tribal or bureau of Indian affairs affidavit of birth.

1 B. This section does not apply to an individual, if all of the
2 following apply:

3 1. The individual is a citizen of a foreign country or, if at the time
4 of application, the individual resides in a foreign country.

5 2. The benefits that are related to the license do not require the
6 individual to be present in the United States in order to receive those
7 benefits.

8 C. IF, PURSUANT TO SUBSECTION A, AN INDIVIDUAL HAS AFFIRMATIVELY
9 ESTABLISHED CITIZENSHIP OF THE UNITED STATES OR A FORM OF NONEXPIRING WORK
10 AUTHORIZATION ISSUED BY THE FEDERAL GOVERNMENT, THE INDIVIDUAL, ON RENEWAL OR
11 REINSTATEMENT OF A LICENSE, IS NOT REQUIRED TO EXECUTE A SUBSEQUENT STATEMENT
12 OF CITIZENSHIP OR ALIEN STATUS OR PROVIDE SUBSEQUENT DOCUMENTATION OF THAT
13 STATUS.

14 D. IF, ON RENEWAL OR REINSTATEMENT OF A LICENSE, AN INDIVIDUAL HOLDS A
15 LIMITED FORM OF WORK AUTHORIZATION ISSUED BY THE FEDERAL GOVERNMENT, THE
16 INDIVIDUAL SHALL EXECUTE A SUBSEQUENT STATEMENT OF CITIZENSHIP OR ALIEN
17 STATUS AND PROVIDE DOCUMENTATION OF THAT STATUS.

18 E. THE CORPORATION COMMISSION SHALL ADOPT RULES REGARDING THE PROPER
19 INDIVIDUAL WHO MUST COMPLY WITH THIS SECTION FOR LICENSES ISSUED BY THE
20 CORPORATION COMMISSION.

21 ~~C.~~ F. For the purposes of this section:

22 1. "Agency" means any agency, department, board or commission of this
23 state or any political subdivision of this state that issues a license for
24 the purposes of operating a business in this state.

25 2. "License" means any agency permit, certificate, approval,
26 registration, charter or similar form of authorization that is required by
27 law and that is issued by any agency for the purposes of operating a business
28 in this state.

29 Sec. 5. Title 41, chapter 6, article 7.2, Arizona Revised Statutes, is
30 amended by adding section 41-1080.01, to read:

31 41-1080.01. Licensing audits; employee verification;
32 suspension; definitions

33 A. AN AGENCY OR POLITICAL SUBDIVISION OF THIS STATE SHALL NOT ISSUE,
34 RENEW OR REINSTATE A LICENSE TO AN INDIVIDUAL IF THE INDIVIDUAL DOES NOT
35 VERIFY THE EMPLOYMENT ELIGIBILITY OF EMPLOYEES THROUGH THE E-VERIFY PROGRAM
36 PURSUANT TO SECTION 23-214, SUBSECTION A.

37 B. BEGINNING JANUARY 1, 2010, EACH AGENCY AND POLITICAL SUBDIVISION OF
38 THIS STATE THAT ISSUES LICENSES SHALL ANNUALLY CONDUCT RANDOM AUDITS OF UP TO
39 FIVE PER CENT OF ALL INDIVIDUALS WHO HAVE BEEN ISSUED A LICENSE TO DETERMINE
40 COMPLIANCE WITH SECTION 23-214, SUBSECTION A. IF AN AGENCY OR POLITICAL
41 SUBDIVISION IS CONDUCTING AN AUDIT OF AN INDIVIDUAL UNDER THIS SECTION,
42 ANOTHER AGENCY OR POLITICAL SUBDIVISION SHALL NOT SIMULTANEOUSLY CONDUCT A
43 SEPARATE AUDIT OF THE INDIVIDUAL FOR OTHER LICENSES THAT ARE ISSUED TO THE
44 INDIVIDUAL. THE AUDIT BY THE AGENCY OR POLITICAL SUBDIVISION OF THIS STATE

1 SHALL CONSIST OF VERIFYING WHETHER THE INDIVIDUAL HAS COMPLIED WITH SECTION
2 23-214, SUBSECTION A.

3 C. IF AN AUDIT DETERMINES THAT AN INDIVIDUAL HAS NOT COMPLIED WITH
4 SECTION 23-214, SUBSECTION A, THE AGENCY OR POLITICAL SUBDIVISION SHALL MAIL
5 A WRITTEN NOTICE TO THE INDIVIDUAL INDICATING THE NONCOMPLIANCE. THE
6 INDIVIDUAL SHALL REGISTER WITH THE E-VERIFY PROGRAM WITHIN THIRTY DAYS AND
7 NOTIFY THE AGENCY OR POLITICAL SUBDIVISION WITH PROOF OF THE REGISTRATION.
8 IF THE AGENCY OR POLITICAL SUBDIVISION DOES NOT RECEIVE NOTIFICATION AND
9 PROOF OF THE REGISTRATION WITH THE E-VERIFY PROGRAM WITHIN THIRTY DAYS, THE
10 AGENCY OR POLITICAL SUBDIVISION SHALL SUSPEND THE INDIVIDUAL'S LICENSE UNTIL
11 THE INDIVIDUAL REGISTERS WITH THE E-VERIFY PROGRAM.

12 D. FOR THE PURPOSES OF THIS SECTION:

13 1. "AGENCY" MEANS ANY AGENCY, DEPARTMENT, BOARD OR COMMISSION OF THIS
14 STATE OR ANY POLITICAL SUBDIVISION OF THIS STATE THAT ISSUES A LICENSE FOR
15 THE PURPOSES OF OPERATING A BUSINESS IN THIS STATE.

16 2. "E-VERIFY PROGRAM" MEANS THE EMPLOYMENT VERIFICATION PILOT PROGRAM
17 AS JOINTLY ADMINISTERED BY THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY
18 AND THE SOCIAL SECURITY ADMINISTRATION OR ANY OF ITS SUCCESSOR PROGRAMS.

19 3. "LICENSE" MEANS ANY AGENCY PERMIT, CERTIFICATE, APPROVAL,
20 REGISTRATION, CHARTER OR SIMILAR FORM OF AUTHORIZATION THAT IS REQUIRED BY
21 LAW AND THAT IS ISSUED BY ANY AGENCY FOR THE PURPOSES OF OPERATING A BUSINESS
22 IN THIS STATE.

23 Sec. 6. Section 41-4401, Arizona Revised Statutes, is amended to read:
24 41-4401. Government procurement; e-verify requirement;
25 definitions

26 A. After September 30, 2008, a government entity shall not award a
27 contract to any contractor or subcontractor that fails to comply with section
28 23-214, subsection A **FOR THE CONTRACTOR'S OR SUBCONTRACTOR'S EMPLOYEES THAT**
29 **ARE DIRECTLY PERFORMING THE WORK UNDER THE CONTRACT IN THIS STATE.** Every
30 government entity shall ensure that every government entity contractor and
31 subcontractor complies with the federal immigration laws and regulations that
32 relate to their employees and section 23-214, subsection A. Every government
33 entity shall require that every government entity contract include all of the
34 following provisions:

35 1. That each contractor and subcontractor warrants their compliance
36 with all federal immigration laws and regulations that relate to their
37 employees and their compliance with section 23-214, subsection A **FOR THEIR**
38 **EMPLOYEES THAT ARE DIRECTLY PERFORMING THE WORK UNDER THE CONTRACT IN THIS**
39 **STATE.**

40 2. That a breach of a warranty under paragraph 1 **OF THIS SUBSECTION**
41 shall be deemed a material breach of the contract that is subject to
42 penalties up to and including termination of the contract.

43 3. That the government entity retains the legal right to inspect the
44 papers of any contractor or subcontractor employee who works on the contract

1 to ensure that the contractor or subcontractor is complying with the warranty
2 under paragraph 1 **OF THIS SUBSECTION**.

3 B. Every government entity that enters into a contract shall establish
4 procedures to conduct random verification of the employment records of
5 government entity contractors and subcontractors to ensure that the
6 contractors and subcontractors are complying with their warranties.

7 C. A government entity shall not deem a government entity contractor
8 or subcontractor in material breach of a contract if the contractor or
9 subcontractor establishes that it has complied with the employment
10 verification provisions prescribed by sections 274a and 274b of the federal
11 immigration and nationality act and the e-verify requirements prescribed by
12 section 23-214, subsection A.

13 D. For the purposes of this section:

14 1. "Contract" means all types of government entity agreements,
15 regardless of what they may be called, for the procurement of services in
16 this state.

17 2. "Contractor" means any person who has a contract with a government
18 entity.

19 3. "E-verify program" means the employment verification pilot program
20 as jointly administered by the United States department of homeland security
21 and the social security administration or any of its successor programs.

22 4. "Government entity" means this state and any political subdivision
23 of this state that receives and uses tax revenues.

24 5. "Services" means the furnishing of labor, time or effort in this
25 state by a contractor or subcontractor. Services include construction or
26 maintenance of any structure, building or transportation facility or
27 improvement of real property.

28 6. "Subcontractor" means a person who contracts to perform work or
29 render service to a contractor or to another subcontractor as a part of a
30 contract with a government entity.